Supreme Court, U.S.
FILED
07-245 JUL 13 2007
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

Linda M. Jwanouskos
Pro Se Petitioner

vs.

U.S. Secret Service
Department of Homeland Security
Respondent

On Petition For Writ Of Certiorari
To The U.S. Supreme Court

PETITION FOR WRIT OF CERTIORARI

Linda Jwanouskos pro se
Post Office Box 5172
Norwell, Mass 02061
727-793-5928

QUESTION PRESENTED

Whether the Merit Systems Protection Board overlooked significant evidence, when making their final decision.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Linda Jwanouskos, respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals.

OPINION BELOW

The opinion of The U.S. Court of Appeals is reproduced in Petitioner's Appendix A at page 1a.

STATEMENT OF JURISDICTION

The judgement of The United States Court of Appeals was entered on June 11, 2007.

CONSTITUTIONAL PROVISIONS INVOLVED

Under the D.C. Police and Fireman's retirement act, Title 5, Section 709, if an employee has more than 5 years employment with the U.S. Secret Service, and they are injured, or disabled, the employee is entitled to a 40% retirement if the injury was not incurred in the Performance of Duty.

Under Title 5, Section 710, if an employee has more than 5 years employment with the U.S. Secret Service, and they are injured, or disabled, the employee is entitled to a 66 2/3% retirement if the injury was incurred in the Performance of Duty.

STATEMENT OF THE CASE

Ms. Jwanouskos never received the Initial Decision from the Merit Systems Protection Board in 1999. Ms. Jwanouskos has a Post Office Box and letters arrive unsealed and partially opened. Ms. Jwanouskos' Writ of Certiorari was returned from the Clerk of the Supreme Court, to make some corrections on July 30, 2007. The padded envelope had been torn open, exposing all of the information provided to the U.S. Supreme Court.

From 2000 to present, Ms. Jwanouskos has been in contact with the U.S. Secret Service in an effort to reverse her removal. Ms. Jwanouskos was advised of her removal from a background check for employment in 2000. In December, 2006, Ms. Jwanouskos wrote to Senator Kennedy to request his assistance with her retirement. Senator Kennedy contacted the Secret Service and an inquiry was initiated. Secret Service Special Agent Mannix conducted the investigation, which revealed the MSPB Initial Decision of removal. In June, 2006, Ms. Jwanouskos was informed of the findings and encouraged to appeal the Initial Decision.

Immediately after Ms. Jwanouskos' promotion to the rank of Sergeant, she experienced an increased amount of harassment. Ms. Jwanouskos suggested the idea of using subliminal technology, and telepathy in the apprehension of criminals. After this suggestion, harassment from her supervisors increased to the point where it became intolerable. A lawsuit was filed. On May 24, 1996, the lawsuit was settled by an Assistant Director Jane Vezeris, of the U.S. Secret Service. She was not from the Secret Service legal counsel's office. Retaliation began and the harassment continued.

Eventually, it was recommended that Ms. Jwanouskos retire. Ms. Jwanouskos filled out a required 5 year security update for her Top Secret Clearance. An error was found on her update, and when requested to correct the information, the Special Agent in Charge was informed that Ms. Jwanouskos would be retiring and would not be renewing her Top Secret Clearance. Ms. Jwanouskos requested from the D.C. Police and Fireman's Retirement Board to delay the retirement process, until her divorce was finished.

There was a dispute with a doctor's assessment, of Ms. Jwanouskos, who was contracted outside of the D.C. Police and Fireman's Clinic, by the Secret Service Administrative Branch. Ms. Jwanouskos was advised not to proceed without legal representation.

Ms. Jwanouskos had retained two attorney's at the same time and could no longer afford both.

The Merit Systems Protection Board (MSPB) Affirmed the U.S. Secret Service's action. The order of the MSPB is included in Appendix A at page 1a.

The Merit Systems Protection Board (MSPB) Denied the Petition for Review. The order of the MSPB is included in Appendix B at page 8a.

The U.S. Court of Appeals for the Federal Circuit upheld the Merit Systems Protection Board's decision. The order of this is included in Appendix C at page 10a.

REASONS FOR GRANTING THE PETITION

The United States Court of Appeals Order and Judgment, states "This court must affirm the Board's decision to uphold Ms. Jwanouskos' removal, unless Mrs. Jwanouskos shows that the decision is unsupported by substantial evidence." Appendix C, page 11a.

The Opinion of the Merit Systems Protection Board, Appendix A, page 2a, states "During subsequent months, appellant was on sick leave, annual leave, and leave without pay as she discussed settlement with the agency and filed an application for disability retirement. When neither of these matters proved to be successful the agency, in an August 30, 1999, notice proposed to remove her based on a charge that as a result of revocation of her security clearance she had failed to meet the requirements of her position."

Ms. Jwanouskos discussed settlement with the agency and the legal counsel was informed any retirement would have to go through the D.C. Police and Fireman's Retirement Board.

Ms. Jwanouskos did not file for a disability retirement. As stated in the Statement of the Case, Ms. Jwanouskos requested from the D.C. Police and Fireman's Retirement Board to delay the retirement process, until her divorce was finished. The Chairman of the D.C. Police and Fireman's Board granted the request.

There is no evidence which was presented to show Ms. Jwanouskos appeared before the D.C. Police and Fireman's Board in an attempt to retire.

The Chairman of the D.C. Police and Fireman's Retirement Board was contacted in June, 2007, a decision was rendered if Ms. Jwanouskos is reinstated on paper, she would be able to retire.

Ms. Jwanouskos', Top Secret Clearance would not be an issue, since she will not be returning to duty.

CONCLUSION

For all the foregoing reasons, Ms. Jwanouskos requests this court to grant review of this matter.

Respectfully Submitted,

Linda Jwanouskos pro se
Post Office Box 5172
Norwell, Mass. 02061
(727) 793-5928

No._____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

Linda M. Jwanouskos - Petitioner - pro se

VS

U.S. Secret Service
Department of Homeland Security - Respondent

PROOF OF SERVICE

I, Linda M. Jwanouskos, do swear on this date, August 6, 2007 as required by Supreme Court Rule 29 I have a PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage pre-paid, or by delivery to a third-party commercial carrier for deliver within 3 calendar days.

The names and the addressed are as follows:

Donna Cahill
U.S. Secret Service
950 H St. N.W. Suite 8300
Washington, DC 20001
(202) 406-5771

PROOF OF SERVICE

Armando Rodriguez-Feo
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice
Attn: Classification Unit
8th Floor
1100 L Street N.W.
Washington, D.C. 20530
Tele: (202) 307-3390

APPENDIX

APPENDIX A - OPINION OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD WASHINGTON REGIONAL OFFICE

No. DC-0752-00-0091-I-1

LINDA JWANOUSKOS
Appellant

March 6, 2000

v.

DEPARTMENT OF THE TREASURY,
Agency

Linda Jwanouskos, - pro se.

Donna Cahill, Esquire, Washington D.C., for the agency

BEFORE

William C. Jenkins
Administrative Judge

INITIAL DECISION

INTRODUCTION

Appellant filed an appeal on November 5, 1999, from the action of the agency removing her effective October 18, 1999. As a non-probationary employee in the competitive service, appellant is entitled to appeal her removal to the Board. 5 U.S.C. 7701(a), 7512, 7511 (a) (1) (A). For the following reasons, the agency's action is AFFIRMED.

ANALYSIS AND FINDINGS

Background

Appellant occupied the position of Sergeant in the Uniformed Division of the agency's United States Secret Service. In 1997, the agency proposed

APPENDIX A - OPINION OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD WASHINGTON REGIONAL OFFICE

and then effected the suspension of appellant's Top Secret security clearance. (Ag. File, Tabs 4g and 4h). Subsequently, by notice dated January 5, 1998, that described in detail the reasons for the action, the agency proposed that appellant's security clearance be revoked. (Ag. File, Tab 4i). Following the written and oral responses of appellant and her attorney, the agency issued and April 23, 1998, decision to revoke her clearance. (Ag. File, Tabs 4n, 40, 4q). During subsequent months, appellant was on sick leave, annual leave, and leave without pay as she discussed settlement with the agency and filed an application for disability retirement. When neither of these matters proved to be successful the agency, in an August 30, 1999, notice proposed to remove her based on a charge that as a result of revocation of her security clearance she had failed to meet the requirements of her position. (Ag. File, Tab 4gg). Following the appellant's oral reply on September 24, 1999, Leonard Tanis, Deputy Assistant Director, Office of Training, issued a decision on October 13, 1999, finding the charge was sustained and warranted appellant's removal. (Ag. File, Tabs, Tabs 4ll and 4mm). Appellant was removed October 18, 1999.

Legal Standard

The agency's action may be sustained only if it is supported by the preponderance of the evidence and is for such cause as will promote the efficiency of the service. 5 U.S.C. 7513(a) and 7701(c)(1)(B). The agency also has the burden of establishing that the penalty it imposed is appropriate. See Douglas v. Veterans Administration, 5 M.S.P.R. 280, 302 (1981). The Supreme Court has held that the Board does not have the authority to review the substance of the underlying security clearance determination in an adverse action appeal under 5 U.S.C. 7513 that is based on the denial or revocation of a security clearance See Dep't of Navy v. Egan, 484 U.S. 518, 530-31, 108 S.Ct. 818, 98 L.Ed.2d 918 (1988).

The Board's review is limited to determining whether a clearance is required for a particular position; whether the clearance was revoked;

APPENDIX A - OPINION OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD WASHINGTON REGIONAL OFFICE

whether there was a vacant, non-sensitive position to which the agency could have reassigned appellant if it had a policy, manifested by regulations, requiring such reassignment; and whether the agency provided the employee with the procedural protections required under section 7513. See King v. Alston, 75 F3d 657, 661 (Fed. Cir. 1996); Drumheller v. Dep't of the Army, 49 F.3d 1566, 1570 (Fed.Cir.1995); Hesse v. Department of State, 82 M.S.R.P. 489, 492 (1999); Bolden v. Dep't of the Navy, 62 M.S.R.P. 151, 154, (1994); Brady v. Dep't of the Navy, 50 M.S.R.P. 133, 137 (1991)

The agency's charge is supported by a preponderance of evidence

The testimony of the Special Agent in Charge, Special Investigations and Security Division, and documentation in the record established that appellant's position required a security clearance, that the security clearance was revoked, and that all positions with the agency are designated as critical sensitive and require a security clearance. (Ag. File, Tabs 4c, 4f, and 4w). The record also establishes that appellant was accorded all of the procedural protections required by 5 U.S.C. 7513. Section 7513 (b) provides as follows:

An employee whom an action is proposed is entitled to --

(1) at least 30 days' advance notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reason for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefore at the earliest practicable date.

APPENDIX A - OPINION OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD WASHINGTON REGIONAL OFFICE

The agency's August 30, 1999, notice of proposed removal gave appellant 30 day's advance notice of the removal action that subsequently was effected on October 18, 1999. In addition that notice informed appellant of the reason for the proposed action, the revocation of her security clearance and the related failure to meet a condition of her position, and summarized the procedural history of the revocation. That history, specifically the January 5, 1998, notice of proposed revocation and the detailed written and oral responses to that proposal filed by appellant's attorney, show that appellant was provided the specific reasons for the revocation and thus for the removal. King, 75 F.3d at 661. The August 30, 1999, proposal notice also provided appellant 15 calendar days from her receipt of it to respond orally and in writing and to submit supporting evidence and informed her of her right to be represented by an attorney or other representative. The October 13, 1999, final decision by Mr. Tanis was issued promptly after appellant's September 24, 1999, oral reply. The record, I find, establishes that the August 10, 1999, notice provided appellant with adequate opportunity to make a meaningful reply before being removed and that the agency fully complied with the procedural requirements of 5 U.S.C. 7513.

Appellant has not established her claim of harmful procedural error

Appellant received the August 30, 1999, notice of propsed removal on September 9, 1999, and that same day submitted a written request for a two -month extension until November 9, 1999, to respond. (Ag. File, Tab 4jj). Appellant subsequently made an oral reply to Mr. Tanis on September 24, 1999. (Ag. File, Tab 4ll). As she was provided more than the minimum 7 day period required by U.S.C. 7513(b)(2), appellant has not shown that the agency violated any procedure in denying her request for an extension. See Rosman v. Dep't of Treasury, 76 M.S.R.P. 334, 344 n.8 (1997).

APPENDIX A - OPINION OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD WASHINGTON REGIONAL OFFICE

Moreover, because the decision to revoke her security clearance became final in August 1998 and because she had already been provided an extensive amount of time to pursue retirement and settlement, appellant has not shown that the agency would likely have reached a different conclusion had it considered the additional statement of facts that, according to her testimony, she would have submitted. Assuming that the denial of her request for an extension was error, appellant therefore has not shown it harmful. 5 C.F.R. 1201.56(c)(3).

The penalty of removal is reasonable

The Board's role in reviewing the agency's selection of a penalty is to assure that the agency conscientiously considered the relevant factors and exercised management discretion within tolerable limits of reasonableness. Schoemer v. Dep't of the Army, 81 M.S.P.R. 363, 366 (1999), citing Douglas v. Veterans Administration, 5 M.S.P.R.280, 306, (1980). Here, because appellant does not meet a requirement of her position and because all positions with the agency require a security clearance, there simply is no alternative to removal.

DECISION

The agency's action is AFFIRMED.

FOR THE BOARD
William C. Jenkins
Administrative Judge

NOTICE TO PARTIES CONCERNING SETTLEMENT

The date that this initial decision becomes final, which is set forth below, is the last day that the administrative judge may vacate the initial decision in order to accept a settlement agreement into the record. See 5 C.F.R. 1201.112(a)(5).

APPENDIX A - OPINION OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD WASHINGTON REGIONAL OFFICE

NOTICE TO APPELLANT

This initial decision will become final on April 10, 2000, unless a petition for review is filed by that date or the Board reopens its case on its own motion. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if this initial decision is received by you more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. The date on which the initial decision becomed final also controls when you can file a petition for review with the Court of Appeals for the Federal Crcuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition, with supporting evidence and argument, must be filed with:

The Clerk of the Board
Merit Systems Protection Board
1120 Vermont Ave., N.W. Room 806
Washington, DC 20419

If you file a petition for review, the Board will obtain the record for your case from the administrative judge and you should submit anything to the Board that is already part of the record. Your petition must be postmarked, faxed or hand-delivered no later than the date this initial decision becomes final, or if this initial decision is received by you more than 5 days after the date of issuance, 30 days after the date you actually receive the initial decision. If you fail to provide a statement with your petition that you have either mailed, faxed or hand-delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

APPENDIX A - OPINION OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD WASHINGTON REGIONAL OFFICE

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court opf Appeals
For the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 60 calendar days after the date this initial decision becomes final.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

APPENDIX B - ORDER AND JUDGEMENT OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD

LINDA JWANOUSKOS
Appellant

DOCKET NUMBER
DC-0752-00-0091-I-1

v.

DEPT. OF THE TREASURY,
Agency

DATE: December 7, 2006

LINDA JWANOUSKOS, pro se

DONNA CAHILL, Esquire, Washington, D.C., for the agency.

BEFORE
Neil A.G. McPhie, Chairman
Mary M. Rose, Vice Chairman
Barbara Sapin, Member

APPENDIX B - ORDER AND JUDGEMENT OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD

FINAL ORDER

The appellant has filed a petition for review in this case asking us to reconsider the initial decision issued by the administrative judge. We grant petitions such as this one only when significant new evidence is presented to us that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The regulation that establishes this standard of review is found in Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. 1201.115)

After fully considering the filings in this appeal, we conclude that there is no error in law or regulation that affects the outcome. 5C.F.R. 1201.115(d).

Therefore, we deny the petition for review. The initial decision of the administrative judge is final. In reaching this decision, we do not address the issue of timeliness of the petition for review. This is the boards final decision in this matter 5 C.F.R. 1201.113.

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after the receipt by your representative, be very careful to file on time.

APPENDIX B - ORDER AND JUDGEMENT OF THE UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD

The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. See Pinat v. Office of Personnel Management, 931 F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5U.S.C. 7703). You may read this law, as well as review the Board's regulations and other related material, at the Merit Systems Protection Board's website. Additional information is available at the court's website. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the courts Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:
Bentley Roberts Jr.
Clerk of the Board
Washington, D.C.

NOTE: This disposition is nonprecedential.

APPENDIX C - ORDER AND JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2007-3123

LINDA JWANOUSKOS,
Petitioner

v.

DEPARTMENT OF THE TREASURY,
Respondent

APPENDIX C - ORDER AND JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Linda Jwanouskos pro se

Armando Rodriguez-Feo, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for respondent. With him on the brief were Peter Keisler, Assistant Attorney General, Jeanne Davidson, Director and Bryant Snee, Deputy Director.

Appealed from: United States Merit Systems Protection Board.

NOTE: This disposition is nonresidential.

APPENDIX C - ORDER AND JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2007-3123

LINDA JWANOUSKOS,
Petitioner

v.

DEPARTMENT OF THE TREASURY,
Respondent

DECIDED June 11, 2007

Before RADER, BRYSON, and LINN,

PER CURIAN.

APPENDIX C - ORDER AND JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

The Merit Systems Protection Board sustained the removal of Ms. Linda Jwanouskos from the United States Secret Service due to the loss of her security clearance. Linda Jwanouskos v. Dep't of the Treasury.[1] MSPB Docket No. DC075200009-1-I-1 (Initial Decision, March 6, 2000: Final Order, December 7, 2006). Because substantial evidence supports the Board's decision, this court affirms.

I

On January 15, 1998, the United States Secret Service proposed to revoke Ms. Jwanouskos' Top Secret security clearance because numerous events had called her suitability into question. On March 4, 1998, Ms. Jwanouskos responded to this proposal.

After consideration, the Deputy Assistant Director of the Secret Service decided to revoke Ms. Jwanouskos' security clearance. The revocation became final when Ms. Jwanouskos did not file and appeal.

On October 18, 1999, the Secret Service removed Ms. Jwanouskos from employment as a Sergeant in its Uniformed Division for failure to meet security clearance requirements. On November 5, 1999, Ms. Jwanouskos filed an appeal with the Board. The Board upheld the Secret Service's removal of Ms. Jwanouskos. The Board found that all Secret Service positions required a security clearance and that upon revocation of the security clearance, removal was the only option. Over seven years later, Ms. Jwanouskos sought the review of the Board's initial decision. While the Board did not address the timeliness of Ms. Jwanouskos' petition, it affirmed its initial decision.

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[1] As of 2002, Congress transferred responsibility for the Secret Service to the Homeland Security. See Homeland Security Act of 2002, Pub. L. No. 107-296, 821, 116 Stat. 2135.224 (2002).

APPENDIX C - ORDER AND JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

II

This court must affirm the Board's decision to uphold Ms. Jwanouskos' removal unless Ms. Jwanouskos shows that the decision is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence. 5U.S.C. 7703(c); Schmittling v. Dep't of the Army, 219 F.3d 1332, 1335 (Fed. Cir. 2000).

The Board properly reviewed the procedures followed by the Secret Service and the decision to remove Ms. Jwanouskos. After reviewing the record and the applicable law, the Board found that the Secret Service provided Ms. Jwanouskos with proper procedural safeguards with respect to the clearance revocation and removal from her position. 5 U.S.C. 7513. After considering all of the evidence, the Secret Service removed Ms. Jwanouskos from employment due to the revocation of her top secret clearance.

Once the Board decided that the Secret Service followed proper procedures for clearance revocation, the decision to revoke Ms. Jwanouskos' clearance was practically not reviewable. See Dep't of Navy v. Egan, 484 U.S. 518, 530-31 (1988). Because all Secret Service positions require a security clearance, substantial evidence supports the Board's decision.